IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.1264 of 1999

Date of decision : May 11, 2007

Sham Sunder Jalan

.... Petitioner

versus

U.T. Chandigarh

.... Respondent

Crl. Revision No.1317 of 1999

Vinod Kumar @ Mama

.... Petitioner

versus

U.T. Chandigarh

.... Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. S.D. Bansal, Advocate
for the petitioner in Crl. Revision No.1264 of 1999.

Mr. N.K. Sanghi, Advocate
for the petitioner in Crl. Revision No.1317 of 1999.

Mr. Vishal Goel, Advocate for
Mr. D.D. Sharma, Advocate
standing counsel for U.T. Chandigarh.

A.N. Jindal, J.

This judgment of mine shall dispose of Criminal Revision No.1264 of 1999 (Sham Sunder Jalan vs. U.T. Chandigarh) and Criminal Revision No.1317 of 1999 (Vinod Kumar alias Mama vs. U.T. Chandigarh), having been arisen out of the judgment dated 5.10.1999 passed by the learned Additional Sessions Judge, Chandigarh, vide which, the appeal was partly accepted and accused Sham Sunder Jalan and Vinod Kumar alias Mama were convicted under Sections 420/471 read with Section 120-B IPC, whereas the remaining accused namely Chaman Lal and Bhupinder Singh

were acquitted of the charges framed against them. Consequently, sentence passed against accused Sham Sunder Jalan and Vinod Kumar alias Mama by the learned Judicial Magistrate Ist Class, Chandigarh, vide its judgment dated 2.6.1990 was maintained.

Factual matrix of the case is that the complainant Punjab State Small Industries and Export Corporation Limited, Chandigarh (hereinafter referred to as 'the Corporation'), through its Financial Manager Subhash Garg lodged a complaint Ex.PW1/A addressed to the S.H.O. Police Station Sector 17, Chandigarh about the loss of Rs.5,34,500/- by way of theft, forgery and criminal breach of trust. It was submitted that some unknown persons with the connivance of officials of the bank cheated the Corporation of the aforesaid amount by drawing the aforesaid amount in five installments, four by way of demand drafts and one by way of cheque from Indian Overseas Bank, Sector 7, Chandigarh. On registration of the case on 11.4.1980, the matter was investigated. During investigation four accused namely Chaman Lal, Vinod Kumar alias Mama, Sham Sunder Jalan and Bhupinder Kumar were spotted.

During the investigation of the case, it transpired that accused Chaman Lal stole cheque No. 798404 in December 1979 and handed over the same to accused Bhupinder Kumar who filled the same in the name of M/s Vijay Enterprises for an amount of Rs.1,72,500/-. The accused forged the signatures of Financial Manager Subhash Garg and handed over the cheque to accused Vinod Kumar alias Mama, who took the same to Delhi where he deposited the same in Punjab National Bank, which was opened on the introduction of Sham & Company on 24.12.1979. Subsequently, he withdrew the amount of Rs.75,000/- on 26.12.1979; Rs.85,000/- on 10.1.1980; and Rs.12,000/- by way of different cheques and they shared the amount among themselves. During investigation, cheating and theft regarding an amount of Rs.1,72,500/- only could be detected out of the total amount of Rs.5,34,500/- by the four accused namely Bhupinder Kumar, Chaman Lal, Sham Sunder Jalan and Vinod Kumar alias Mama. Learned Judicial Magistrate Ist Class, Chandigarh, after trial against the accused, vide his judgment dated 2.6.1990 convicted all the accused and sentenced them accordingly.

On appeal, the first Appellate Court, vide its judgment dated 5.10.1999, while accepting the appeals of the accused Chaman Lal and Bhupinder Kumar, acquitted them from all the charges; and while partly accepting the appeals of accused Sham Sunder Jalan and Vinod Kumar alias Mama, acquitted them from the charges under Sections 467/120-B IPC, 380/120-B IPC. However, conviction and sentence of these two accused namely Sham Sunder Jalan and Vinod Kumar awarded by the trial Court under Sections 420/120-B IPC, 471/120-B IPC and under Section 120-B IPC, was ordered to be maintained. Hence these revisions.

I have heard Mr. S.D. Bansal, Advocate, Mr. N.K. Sanghi, Advocate, Mr. Vishal Goel, learned standing counsel for U.T. Chandigarh and perused the records of this case with their able assistance.

Out of the two accused-petitioners namely Sham Sunder Jalan and Vinod Kumar alias Mama, Sham Sunder Jalan is the Financial Manager of the Corporation. He has been convicted by the trial Court solely on the ground that he introduced Vinod Kumar alias Mama at the time of opening of the account in the Bank. Notwithstanding the fact that the accused Sham Sunder Jalan admitted having introduced accused Vinod Kumar alias Mama for opening of the account and that some cheques were issued in his favour in that account. He could not be said to have participated in the commission of the crime with Vinod Kumar alias Mama, because the purchase of the cheques by Vinod Kumar alias Mama from Sham Sunder Jalan is indicative of the fact that the later knew him, therefore, he had the valid reasons for identifying him (Vinod Kumar alias Mama) at the time of opening of the account, but no such oral or documentary evidence has been brought on record that Sham Sunder Jalan got any benefit out of the opening of the account by Vinod Kumar alias Mama and for that reason he was privy to the crime. It is also not in evidence that Sham Sunder Jalan accused ever misused the said account or purchased any cheque from Vinod Kumar alias Mama accused. Under these circumstances, the position of the identifier could not be treated better than that of a friend. He could not, by any stretch of imagination, be said to be perpetrator of the crime. He introduced the man and not his name. Mere fact that Vinod Kumar accused at the time of opening of the account mentioned his name as V.K. Gupta as Proprietor of

Vijay Enterprises, could not make any difference in the eyes of Sham Sunder Jalan accused to refuse his identification. Therefore, the trial Court fell in error to hold complicity of Sham Sunder Jalan in the conspiracy with accused Vinod Kumar for stealing the amount of Rs.1,72,500/- on the basis of the cheque which was forged by Vinod Kumar.

Now coming to the accused Vinod Kumar, it may be observed that Vinod Kumar opened his account at Delhi in Punjab National Bank and deposited the cheque of Rs.1,72,500/- and subsequently withdrew the amount of Rs.75,000/- on 26.12.1979; Rs.85,000/- on10.1.1980; and Rs.12,000/- on different dates. He being the beneficiary of the amount of Rs.1,72,500/-, which he withdrew, could be said to be the real culprit. He did not explain as to in what right he had received the said cheque from the Corporation. In the absence of any such proof, which was specifically in his knowledge, he was rightly held to have committed the crime.

Now coming to question of sentence, it may be observed that the offence was committed as far back as in the year 1979-80. Accused Vinod Kumar has no criminal past. He appears to have attempted to fetch easy money, therefore, it would not be appropriate to send him to prison at this stage. However, the Corporation can be adequately compensated.

In the wake of aforesaid discussions, Criminal Revision No.1264 of 1999 filed by Sham Sunder Jalan is hereby accepted, the impugned judgment qua him is set aside and he is acquitted of the charges framed against him.

However, Criminal Revision No.1317 of 1999 filed by the accused Vinod Kumar alias Mama is hereby dismissed with the modification in the impugned judgment to the extent that he be released on probation under Section 4(1) of the Probation of Offenders Act, 1956 on his executing a bond in the sum of Rs.5000/- with one surety in the like amount to the satisfaction of the trial Court for a period of one year within which period he shall continue to be of good behaviour and keep peace and in case of breach of conditions of the bond, he will be ready to serve sentence as and when called for, subject to the condition that he shall deposit the sum of Rs.1,72,500/- with the Corporation along with interest @ 6% per annum within three months from today, failing which the revision

petition shall be treated as dismissed in toto. However, sentence of fine already awarded against him is converted into costs of litigation.

May 11, 2007 **(A.N. Jindal)**
deepak **Judge**

To be referred to reporter : **Yes/No.**